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The Future of Public Employee Unionism in the United States L'avenir du syndicalisme dans la fonction publique aux États-Unis

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Résumé de l'article

Dans cet article, l'auteur considère les différents aspects du syndicalisme dans la fonction publique outre-frontière. Il rappelle d'abord qu'il ne s'agit pas d'un phénomène récent, puisque, aux environs de 1930, les cols bleus des chantiers navals s'étaient groupés et que le syndicat des facteurs fut un des premiers affiliés de la Fédération américaine du travail. Cependant, à venir jusqu'à la décennie 60, la syndicalisation des employés des services publics n'était guère une caractéristique du mouvement ouvrier des États-Unis dont la très grande majorité des membres appartenait au secteur privé.

Avant 1960, il était interdit aux associations qui existaient dans le secteur public de négocier collectivement. Ceci détournait évidemment les employés d'appartenir à des associations dont le seul rôle était d'agir comme groupes de pression. Le droit de négociation existait dans quelques villes, à la *Tennessee Valley Authority*, mais ce n'était là que quelques îlots dans un océan sans limites dominé par les flots hostiles de la doctrine de la souveraineté de l'État, de législatures à mentalité rurale antisyndicale et de l'acceptation du principe de l'interdiction de la grève.

C'est l'État du Wisconsin qui, en 1959, adopta la première loi donnant le droit de négociation collective aux employés des gouvernements locaux. Elle fut suivie de l'arrêt 10988 du président Kennedy qui accorda certains droits de négociation aux employés du gouvernement fédéral, mais sa signification lui venait plus du fait que le président favorisait la négociation collective que de son contenu objectif. Cependant, le coup d'envoi était donné et, au début des années 60, les employés des services publics commencèrent à adhérer aux syndicats en plus grand nombre, principalement parce qu'ils étaient mécontents de leurs conditions de travail. D'autre part, le phénomène d'urbanisation s'accroissant, un nombre de plus en plus grand d'États concédèrent ce droit à leurs employés. Après le Wisconsin, ce furent, en 1966, le Michigan, le Connecticut, le Delaware, le Massachusetts et le Minnesota. De fait, au début de 1973, il n'y avait plus que dix-huit États qui ne garantissaient pas le droit de négociation collective à leurs propres employés et à ceux des gouvernements locaux. Par ailleurs, il faut noter que, même là où ce droit n'était pas reconnu, il est arrivé que les municipalités et les conseils scolaires aient négocié volontairement ou encore sous la menace de grève.

Fait à souligner, à l'heure actuelle, alors que dans le secteur privé, le syndicalisme stagne, l'organisation va bon train dans les services publics. Le pourcentage des employés des services publics qui sont membres de syndicats, d'associations professionnelles ou d'autres groupements est plus élevé que le pourcentage du nombre de syndiqués dans le secteur privé. Le personnel du service des postes est syndiqué à près de cent pour cent. Le pourcentage dépasse cinquante pour cent pour les autres groupes d'employés du gouvernement fédéral. Un tiers des employés des États et des municipalités le sont aussi. Le degré de syndicalisation est plus élevé dans les grandes agglomérations ainsi que dans les États de la Nouvelle-Angleterre, des Grands Lacs et de la côte du Pacifique que dans les régions à prédominance rurale.

L'auteur signale ensuite que le secteur public se fait remarquer par la diversité des organisations qui s'y disputent le droit de représenter les employés. Il y a plusieurs types d'organisations : associations proprement dites d'employés de services publics, syndicats du secteur privé, comme ceux des journalistes et des routiers, qui recrutent parmi les employés des municipalités et des États, associations d'employés plus anciennes qui se transforment en véritables syndicats, associations professionnelles, enfin, dont le premier objectif est de protéger la profession, mais qui se trouvent plus ou moins obligés de s'engager dans le processus de la négociation collective.

L'existence de cette multitude d'associations a généré des conflits, conduit parfois à la coopération et entraîné des fusions. Ces luttes ont favorisé la syndicalisation du milieu, mais elles ont également coûté cher en temps, en énergie et en argent. L'auteur observe que la négociation collective est une menace pour les organisations professionnelles. Si elles la rejettent, elles courent le risque de perdre des membres qui passent aux syndicats conventionnels; pour l'accepter, il leur faut restructurer leurs organisations, augmenter les cotisations et affronter des conflits internes naissant de divergences de vue entre salariés, cadres et professionnels indépendants. Contrairement au secteur privé, la plupart des lois nouvelles étendent le droit de négociation à certaines catégories de cadres. Ceux-ci doivent cependant faire partie d'unités de négociation distinctes. Par ailleurs, en matière de sécurité syndicale, on recourt principalement à la formule de précompte syndical généralisé.

Un des problèmes majeurs, c'est évidemment celui de la grève. Même si elles sont généralement interdites, les grèves sont fréquentes et se produisent surtout au niveau des municipalités et des conseils scolaires. La plupart des syndicats ont abrogé les restrictions qu'ils s'étaient imposées en cette matière, ce qui en démontre le caractère de plus en plus militant et agressif. Du côté législatif, la tendance est de plus en plus à l'autorisation d'un droit limité de grève qui tient compte de la santé et de la sécurité de la population. L'arbitrage exécutoire des différends existe aussi.

L'action politique comme moyen de pression qui était courante avant la généralisation du droit de négociation est bien moins fréquente mais la politique reste un facteur important. On ne se gêne pas pour faire usage de la négociation à double palier.

Enfin, la participation des groupes de couleur aux syndicats est considérable. Beaucoup de dirigeants syndicaux locaux appartiennent à des groupes sociaux minoritaires.

L'auteur conclut en soulignant que les choses changent vite et qu'il serait hasardeux de faire des prédictions mais il ne peut s'empêcher de noter que, les services publics grossissant sans cesse, le syndicalisme devrait conserver un bon bout de temps le vent dans les voiles. Le fait que certains États retardataires devront accorder le droit de négociation sous la force de l'opinion tend également au même effet. Il continuera aussi d'y avoir des conflits entre syndicats et organisations professionnelles, mais on mettra de plus en plus l'accent sur la négociation collective. À mesure que le syndicalisme progressera, il se peut aussi que l'on en arrive à des unités de négociation moins fragmentées et à des négociations au niveau des États plutôt que des collectivités locales. Les grèves se feront plus nombreuses. Toutefois, la négociation collective sera toujours différente dans le secteur public que dans le secteur privé. Par ailleurs, il faut considérer qu'elle reste le meilleur moyen de fixer les salaires et les conditions de travail parce que la nature du travail dans la société moderne, les besoins des employés et la distinction entre travailleurs et employeurs se ressemblent assez dans les deux secteurs pour justifier dans les services publics un régime de négociation fondé sur les mêmes principes que dans l'entreprise privée, même si certaines modalités doivent être différentes.

The Future of Public Employee Unionism in the United States

Jack Stieber

The author makes an evaluation of the significant features of collective bargaining in the United States' public sector. He deals successively with the forms of organization of public employee unionism, the impact of legislation on employee organization, the rivalries existing between various unions, associations, and professional organizations and also with more specific issues such as : the status of supervisors, union security, the strike, political activity and minority participation.

Organization of public employees in the United States is not a recent phenomenon. Organization of blue collar workers in government naval yards dates back to the 1830s, a union of letter carriers was one of the first affiliates of the American Federation of Labor and many civil service employee associations were organized in the early 1900s.¹ But until the 1960s, which I have elsewhere labeled « the decade of the public employee »² unionism of public employees was a relatively unimportant feature of an American labor movement whose power and influence was measured by the size, financial resources and political clout of its private sector unions. In a real sense public employee unionism is an adolescent which has shot up during its childhood to a point where it now rivals in size, though not in power and influence, some

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¹ Bob F. REPAS, *Collective Bargaining In Federal Employment* (Second Edition), Industrial Relations Center, University of Hawaii, 1973, p. 7.

² Jack STIEBER, « Collective Bargaining in the Public Sector, » in *Challenges to Collective Bargaining*, edited by Lloyd Ulman, Prentice-Hall, Englewood Cliffs, 1967, p. 65.

of its older more mature brethren in the labor movement, and whose best years lie ahead.

It would be a mistake to dwell very long on the past of such a youthful development and foolhardy to try to predict far into the future and in detail what is in store for a movement that is still flexing its muscles and trying to decide which way to go. Accordingly, most of my remarks will deal with the current status of public employee unionism and indications of trends during the next five or ten years.

THE RECENT PAST

Before the 1960s, public employee unionism was limited by the absence of a statutory base which would have enabled unions to bargain collectively with government employers. This seriously weakened the motivation for employees to join unions which, for the most part, engaged in lobbying for legislation and local ordinances favorable to its members and representing them in grievance procedures where they existed. Collective bargaining did exist in a small number of cities, the Tennessee Valley Authority and some Interior Department installations, and to a limited extent among federal wage board (blue collar) employees.³ But these were islands in a sea of unfriendly waters populated by the sovereignty doctrine, rural dominated and often anti-labor state legislatures, general acceptance of a no-strike policy in government even by labor unions, and public employee unions too weak to press for legislation granting collective rights to government employees.

In 1959, the Wisconsin legislature enacted the first state law providing collective bargaining for local government employees. It was followed three years later by Executive Order 10988, issued by President Kennedy in January 1962, extending limited collective bargaining to federal employees. Executive Order 10988 was less significant for its content than as evidence of Presidential support for the principle of collective bargaining for government employees. It was used by public employee unions in much the same way that President Roosevelt's endorsement of the Wagner Act was interpreted to workers as meaning : « The President wants you to join a union. »

During the early 1960s, public employees started to join unions at all levels of government in greater numbers than ever before. Dis-

³ *Ibid.*, p. 70.

satisfaction with salaries, fringe benefits and working conditions, and civil service systems also contributed to burgeoning unionization. These factors plus the 1962 and 1964 Supreme Court reapportionment decisions, which resulted in increased urban representation in state legislatures, and aggressive lobbying in public employee unions led to the enactment of collective bargaining laws in a number of states. The proper allocation of credit (or blame) for such laws to individual factors is impossible to determine, but by the mid-1960s it was clear that collective bargaining for public employees was « an idea whose time had come. »

During the late 1960s and early 1970s, hardly a month went by without the enactment by a state legislature of some law dealing with collective bargaining for public employees generally or for a particular group of government workers. Among the early comprehensive laws, in addition to the Wisconsin Statute, were those in Michigan, Connecticut, Massachusetts, Delaware and Minnesota, all passed by 1966. It is risky to venture an estimate, at any given time, how many states have some statutory provision for public employee bargaining, the situation changes so rapidly. However, in early 1973, only eighteen states were reported by the U. S. Department of Labor as having no statutory requirement for collective bargaining by any group of state or local government employees.⁴ In addition, many cities and school districts in states without laws engage in bargaining on a voluntary basis or because they do not wish to face the alternative of strike action by organized employees in their jurisdictions.

SIGNIFICANT FEATURES OF PUBLIC EMPLOYEE UNIONISM

There are interesting developments taking place at all three levels of government in the United States : federal, state and local. But, because of time limitations, I shall deal primarily with local government because « that's where most of the action is. »

Extent of Organisation

The rush by public employees to join unions and associations was surprising. At a time when membership in private sector unions was

⁴ « Summary of State Policy Regulations for Public Sector Labor Relations : Statutes, Attorney Generals' Opinions and Selected Court Decisions, » February 1973, U. S. Department of Labor, Labor-Management Services Administration.

lagging behind the growth in the labor force, public sector organization was proceeding rapidly. Currently, the proportion of public employees who are members of unions or employee associations is much greater than the approximately 25 percent of private sector employees who are organized. Organization is greatest among postal employees who are almost 100% organized; more than half of all other federal employees are organized; at the local level, fire fighters, police officers and teachers are the most highly organized groups; and, exclusive of teachers, about one-third of all state and local government employees belong to unions or associations. There is a high correlation between size of city and extent of organization, and, geographically, organization is greatest in the Mid-Atlantic, New England, East North Central and Pacific Coast states.⁵ But there are numerous exceptions to these trends, with many pockets of organized employees in small cities and counties in the South and Mountain states where there are few collective bargaining laws and overall organization is low.

Organizational Models

One of the distinctive features of public employee unionism is the diversity of organizations competing for the right to represent government employees. Unlike the private sector where the term « labor movement » may appropriately be used to characterize unions active in organizing workers, the public sector presents a more complex picture. There are several types of organization active in government which may be classified as follows :

All-public unions which draw membership almost entirely from among government workers. The American Federation of Government Employees (AFGE), the American Federation of State, County and Municipal Employees (AFSCME), the American Federation of Teachers (AFT), all affiliated with the AFL-CIO, and such independent unions as the National Federation of Federal Employees (NFFE) and National Association of Government Employees (NAGE) are typical of this group.

⁵ Jack STIEBER, *Public Employee Unionism : Structure, Growth, Policy*, The Brookings Institution, Washington, D.C., 1973, pp. 11-14 and Appendix. This paper is based, in large part, on this book where much more detail may be found on the subjects discussed.

Mixed unions, which started as private sector organizations but have branched out to include sizable numbers of public employees in their membership. Examples of such unions are the Service Employees international Union (SEIU), the Laborers International Union of North America (LIU), both affiliated with the AFL-CIO, and the independent Teamsters Union. In addition, many other unions have signed up varying numbers of public employees even though their efforts continue to be directed primarily at organizing and representing workers in private industry.

Employee associations, many of which existed long before unions became active in organizing public employees, though their efforts were concentrated in lobbying, representing members in grievance procedures and in courts, and in providing various commercial services to members. At the state level most of these associations are affiliated with the Assembly of Government Employees (AGE). But there are also hundreds of other local independent associations which have taken on representation and collective bargaining responsibilities.

Uniformed protective organizations representing police and fire fighters. These may take the form of unions such as the International Association of Fire Fighters (IAFF), an AFL-CIO union, or of non-union associations such as the Fraternal Order of Police (FOP), International Conference of Police Associations (ICPA), or local independent associations.

Professional associations, whose primary function is to serve the professional needs of members, have become engaged in collective bargaining in varying degrees. The more than a million member National Education Association (NEA) and its state affiliates is an example of a professional association that has become so heavily committed to collective bargaining as to raise the question whether it should not be classified as a union along with the American Federation of Teachers. Less committed to collective bargaining are such organizations as the American Nurses Association (ANA), the American Association of University Professors (AAUP) and many other professional associations.

The above classifications are not mutually exclusive since some organizations belong to two of the groups and others are in transition between classifications. Organizations could be further identified by level of government at which they operate, occupational groups they serve and other characteristics. The classifications do serve to indicate the

variety and complexity of the organizational picture in public employment which affects the future of public employee unionism.

Impact of Legislation

Certainly legislation encourages employees to join unions and membership is generally largest in states with collective bargaining laws. But the relationship is also reversible, with organization sometimes preceding and influencing legislation which then leads to still greater organization. This is illustrated by the case of Michigan. By 1965, there was already considerable membership by government employees in unions and associations which successfully lobbied the legislature to pass a public employee collective bargaining law. After the law enacted, membership increased in every occupational group. But even more significant than the increase in membership was the effect on written agreements between employee organizations and government employers. In 1965, only about 15 percent of Michigan's cities had signed contracts with one or more employee organizations. By 1969, this proportion had increased to 75 percent, and by now, it would be surprising to find any city with over 10,000 population that did not bargain collectively with some union or association.

Conflict, Cooperation and Merger

Competition among organizations for members and exclusive representation of public employees is more widespread and more intense than at any time since the conflict between the AFL and the CIO before the federations merged in 1955. AFL-CIO unions compete with each other and with independents, as well as with associations and professional organizations. While competition often results in more workers being organized, it also causes unions to expend a great deal of energy, time and money in fighting one another that could better be utilized in other more productive activities. More cases brought to the impartial arbitrator under the AFL-CIO Internal Disputes Plan forbidding raids and jurisdictional encroachments have involved public employee unions than any other single category of complaints. In an effort to reduce rivalry and encourage cooperation, the AFL-CIO is exploring the establishment of a new Public Employee Department.

Whatever is done within the AFL-CIO will not affect rivalry between unions and associations. Unions have learned through experience that associations that they previously labeled « company unions » and

« discount houses » could also be formidable opponents in contests for the public employee allegiance and support. This is particularly true of those associations which were previously opposed to unions, their methods and objectives, but have made the transition to collective bargaining and are behaving like unions in almost every respect. In a number of instances unions and associations have decided that merger or affiliation made more sense than conflict. Thus the Hawaii Government Employees Association and the Rhode Island State Employees Association have merged with AFSCME, the Los Angeles County Employees Association has joined the SEIU, and many other independent associations have worked out accommodations with unions. On the other hand, merger discussions between the NEA and the AFT have recently broken down and other associations, like those in New York and Oregon, have resisted overtures from unions, preferring to maintain their independent status.

Professionalism and Collective Bargaining

Collective bargaining poses a major problem and threat to professional organizations. If they reject collective bargaining as a legitimate pursuit, they run the risk of losing members to unions winning exclusive representation rights under state laws for units of professional employees. Espousal of collective bargaining may require restructuring of their organizations, increasing dues and facing the prospect of internal conflict among supervisory and non-supervisory members with common professional but conflicting economic objectives. Different organizations have resolved this dilemma in different ways. The NEA has gone all the way, adopting collective bargaining and the militant tactics usually associated with unions. The ANA, which was the first professional association to endorse collective bargaining in 1946, has encountered serious financial and philosophical difficulties in implementing this commitment at the state level. The AAUP, long respected for its effectiveness in advancing academic freedom and faculty participation in university governance, is still in the early stages of deciding the extent of its commitment to collective bargaining and working out priorities between this new activity and traditional missions of the organization.

Status of Supervisors

Unlike the Taft-Hartley law, most state laws extend collective bargaining rights to supervisory employees in government. The rationale for the difference in treatment is generally explained in terms of the lack

of managerial status of supervisors and the blurred line between supervisory and non-supervisory employees in public as compared with private employment. On a more practical level, public employee organizations unlike most private sector unions, have a long history of including supervisors together with other employees in the same organization. This has led to demands for different treatment of supervisors than in the private sector. The compromise solution provided in most legislation is to extend coverage to supervisors but to prohibit their inclusion in the same units with employees they supervise. This separation of bargaining units has resulted in reducing the leadership role previously held by supervisors in many associations and, in some organizations, has led to the formation of separate locals or chapters for supervisors. Supervisory employees have also established their own organizations to represent them in some jurisdictions.

Union Security

The strongest form of union security permitted in public employment is the agency shop whereby the parties may agree to require unit members to join or to pay a fee not in excess of membership dues to an organization which has exclusive representation rights for the unit. In two states, Hawaii and Rhode Island, the agency shop is mandated by law for all units accorded exclusive representation rights. The rationale for such a statutory requirement, which goes beyond the union security permitted under the Taft-Hartley Act, is that since exclusive representation requires « fair representation » of members and non-members alike, all employees should contribute to the cost of such representation. The agency shop is not authorized for federal employees and is not permitted under some state laws.

The Strike Issue

Strikes by government employees, though generally prohibited, occur frequently. They reached a peak of 411 and 412 in 1969 and 1970 respectively and declined somewhat in subsequent years. Though relatively less significant in terms of number and man-days lost than in private industry, public sector strikes, which occur most frequently at the local level of government, have high visibility because they affect activities touching large numbers of people. This is particularly true of teachers' strikes which are more numerous by far than stoppages in any other governmental activity.

Few employee organizations have retained the no-strike policy which was formerly quite common in constitutions and by-laws. In recent years, the fire fighter's union, nurses' association, International Conference of Police Associations and many state and local employee associations have voted to rescind their no-strike policies. These actions were designed to lend credibility to strike threats in negotiations and have not usually been followed by an increase in strikes by these organizations. Repeal of no-strike policies is, however, indicative of the growing militancy among public employee organizations generally. While unions have called more strikes than associations (except among teachers), every type of employee organization has been involved in strikes and no government activity has been immune from an interruption of services due to concerted employee action. There have also been many stoppages by unorganized government employees, a phenomenon that rarely occurs in private industry.

Despite the large number of strikes, they are still prohibited by statutory and common law in all but a few states. However, the last few years has seen a slight trend towards granting a limited right to strike to public employees not engaged in activities affecting health and safety, and employers have encountered difficulty in securing court injunctions against on-going strikes in a number of jurisdictions. Compulsory arbitration for police and fire fighters is now provided by statute in about a dozen states, and a few municipalities, most notably New York City, have compulsory arbitration for all public employee disputes after mediation and fact-finding have failed.

Political Activity

Before collective bargaining, public employee organizations depended heavily upon political activity to secure improvements in wages, hours and working conditions for their members. Collective bargaining laws were supposed to remove these subjects from the political area and to some extent they have. The parties on both sides of the table pay lip service to their preference for collective bargaining over political influence peddling, but politics is still an important factor in some negotiations. « Double deck bargaining » in which unions pressure mayors, legislators and city council members to more than they have been able to get at the bargaining table is not uncommon. This is particularly prevalent among police and fire fighters who, because of the protective nature of their services, have considerable clout with elected officials and

the general public. Still, some gains have been made in divorcing collective bargaining from politics and more can be expected as the parties develop greater expertise and confidence in the bargaining process.

Minority Participation

Blacks and other minority groups are proportionally more numerous in public employee organizations than in private sector unions. This reflects the relatively large number of workers employed in low-earning jobs found in such local government activities as garbage collection, sanitation, street maintenance and others. Many local unions have black officers and minority group members are more significant in the leadership of unions at the intermediate and national levels than in private sector unions. Because of their numbers, minority members are able to be elected to office and do not need to form black caucuses to exert pressure on predominantly white leadership as they have in some private sector unions. Such caucuses do exist in police and fire fighter organizations where minority membership is low and non-white leadership almost non-existent.

WHAT OF THE FUTURE ?

Things are changing so fast in public employment that projections and predictions are even more hazardous than they usually are in the volatile field of labor-management relations. Nonetheless, my assignment calls for me to assess the future of public employee unionism and I shall not avoid it.

Government, especially at the local level, is a major growth industry in the United States, as I am sure it is also in Canada. I expect union membership to keep pace with and to exceed the rate of growth in government employment. New legislation in states still without any public employee bargaining laws, and extension of collective bargaining coverage in states with such laws, will continue to fuel the organizational efforts of unions. There are some states that will not enact collective bargaining laws unless forced to do so by the threat of a federal law providing minimum standards applicable to state and local government employees and ceding jurisdiction to states meeting such standards. Several bills have been proposed in Congress to guarantee collective bargaining to public employees in states and I expect such legislation will be enacted during this decade.

It is anomalous that organization among classified federal employees, where the scope of bargaining excludes wages and salaries, pensions and other important subjects, should have proceeded so rapidly. Unions are now pressing to replace Executive Order 11491, which replaced E.O. 10988, with legislation enacted by Congress to provide a more solid basis for collective bargaining by federal employees. It is likely that such statutory authority, though opposed by the current Administration, will be provided within the next few years. While I do not expect Congress at this time to give up its authority to legislate wages, salaries and other major conditions of employment, or to eliminate the strike prohibition, the enactment of a law will strengthen unions and associations and eventually lead to broadening the present limited scope of bargaining in the federal government.

Inter-union conflict will continue as will competition between unions and associations. But so also will mergers and affiliation of associations with unions. By the end of the decade, the convergence of these two major models of organization in terms of objectives, strategy and tactics will be so complete that it will be difficult to tell them apart. In order to win over the associations, the mixed unions will have to undergo structural changes to give a greater voice and more influence to their public employee members than they have in the past.

Professional associations like the ANA and the AAUP will have to decide within the next few years how much emphasis they want to place on collective bargaining. While there is no inherent philosophical conflict between collective bargaining and professional objectives, the costs of the bargaining process are so great that it can only be carried on effectively when given top priority. In the process, other objectives must be sacrificed to some degree. In my view, the professional organizations have no alternative but to espouse collective bargaining fully, for to do otherwise would put them at a disadvantage in competing with unions. Once unions win exclusive representation for professional units, many professionals will not wish to pay dues to two organizations and will choose to belong to the organization which represents them on economic matters. On the other hand, the record to date indicates that professional associations can compete successfully with unions if they establish their commitment to collective bargaining.

Up to now, public sector bargaining has been carried on individually and separately between government jurisdictions and each of the unions

they recognize. In some cities, this has resulted in continuous negotiations with a dozen or more different unions representing employees in many times that number of bargaining units. In the past, unions and employers have preferred to take advantage of the short term benefits of such individual negotiations rather than develop a more rationale and more economic system. But there is evidence that some unions and employers are beginning to recognize the limitations of individual bargaining and are searching for alternatives. I anticipate that in the future we shall see experimentation with various forms of multi-employer and union coalition bargaining which should result in settlements that will serve both sides and the general public better than agreements reached in individual negotiations or imposed by arbitration awards.

There has been considerable experimentation under state laws with a variety of impasse procedures to resolve disputes and avoid strikes in public employment. Mediation, fact-finding with and without mediation, voluntary and compulsory arbitration of the conventional and final-offer types, and a combination of mediation and arbitration called med-arb, have all been tried and new approaches will undoubtedly be developed in the future. A few studies have been made of these procedures and additional studies are in process. But it is still too early to make definitive judgements regarding the relative value of alternative approaches.

It is safe to predict that strikes will continue regardless of impasse procedures, both in states with a blanket prohibition against all strikes, as well as in states providing for a limited right to strike in public employment. There is growing support, not only among unions, but also among public employers and neutrals for permitting strikes by most government employees subject to injunctive relief, if and when there is evidence that the stoppages will or, if already in process, have affected health and safety. Only police and fire fighter strikes would be prohibited and made subject to compulsory arbitration. Tripartite conferences sponsored by the prestigious American Assembly of Columbia University in various parts of the United States have reached a surprising degree of consensus on these conclusions. While a few state legislatures have opted for a limited right to strike and others are considering modifications of their blanket prohibition on all public employee strikes, I see no large-scale departure from the conventional wisdom that public employees should be treated differently from private sector employees insofar as strikes are concerned.

In the last analysis, we must look to collective bargaining as the best and really the only viable long term solution to the determination of wages, hours and working conditions in public employment, as we have in private industry. Public and private employment are sufficiently different to preclude a wholesale transfer of laws and procedures from one sector to the other. But the nature of work in modern society, the needs of employees, and the distinctions between labor and management are sufficiently similar in all sectors to make joint determination of the terms and conditions of employment preferable to other methods.

L'avenir du syndicalisme dans la fonction publique aux États-Unis

Dans cet article, l'auteur considère les différents aspects du syndicalisme dans la fonction publique outre-frontière. Il rappelle d'abord qu'il ne s'agit pas d'un phénomène récent, puisque, aux environs de 1930, les cols bleus des chantiers navals s'étaient groupés et que le syndicat des facteurs fut un des premiers affiliés de la Fédération américaine du travail. Cependant, à venir jusqu'à la décennie 60, la syndicalisation des employés des services publics n'était guère une caractéristique du mouvement ouvrier des États-Unis dont la très grande majorité des membres appartenaient au secteur privé.

Avant 1960, il était interdit aux associations qui existaient dans le secteur public de négocier collectivement. Ceci détournait évidemment les employés d'appartenir à des associations dont le seul rôle était d'agir comme groupes de pression. Le droit de négociation existait dans quelques villes, à la *Tennessee Valley Authority*, mais ce n'était là que quelques îlots dans un océan sans limites dominé par les flots hostiles de la doctrine de la souveraineté de l'État, de législatures à mentalité rurale antisyndicale et de l'acceptation du principe de l'interdiction de la grève.

C'est l'État du Wisconsin qui, en 1959, adopta la première loi donnant le droit de négociation collective aux employés des gouvernements locaux. Elle fut suivie de l'arrêté 10988 du président Kennedy qui accorda certains droits de négociation aux employés du gouvernement fédéral, mais sa signification lui venait plus du fait que le président favorisait la négociation collective que de son contenu objectif. Cependant, le coup d'envoi était donné et, au début des années 60, les employés des services publics commencèrent à adhérer aux syndicats en plus grand nombre, principalement parce qu'ils étaient mécontents de leurs conditions de travail. D'autre part, le phénomène d'urbanisation s'accroissant, un nombre de plus en plus grand d'États concédèrent ce droit à leurs employés. Après le Wisconsin, ce furent, en 1966, le Michigan, le Connecticut, le Delaware, le Massachusetts et le Minnesota. De fait, au début de 1973, il n'y avait plus que dix-huit États qui ne garantissaient pas le droit de négociation collective à leurs propres employés et à ceux des gou-

vernements locaux. Par ailleurs, il faut noter que, même là où ce droit n'était pas reconnu, il est arrivé que les municipalités et les conseils scolaires aient négocié volontairement ou encore sous la menace de grève.

Fait à souligner, à l'heure actuelle, alors que dans le secteur privé, le syndicalisme stagne, l'organisation va bon train dans les services publics. Le pourcentage des employés des services publics qui sont membres de syndicats, d'associations professionnelles ou d'autres groupements est plus élevé que le pourcentage du nombre de syndiqués dans le secteur privé. Le personnel du service des postes est syndiqué à près de cent pour cent. Le pourcentage dépasse cinquante pour cent pour les autres groupes d'employés du gouvernement fédéral. Un tiers des employés des États et des municipalités le sont aussi. Le degré de syndicalisation est plus élevé dans les grandes agglomérations ainsi que dans les États de la Nouvelle-Angleterre, des Grands Lacs et de la côte du Pacifique que dans les régions à prédominance rurale.

L'auteur signale ensuite que le secteur public se fait remarquer par la diversité des organisations qui s'y disputent le droit de représenter les employés. Il y a plusieurs types d'organisations : associations proprement dites d'employés de services publics, syndicats du secteur privé, comme ceux des journaliers et des routiers, qui recrutent parmi les employés des municipalités et des États, associations d'employés plus anciennes qui se transforment en véritables syndicats, associations professionnelles, enfin, dont le premier objectif est de protéger la profession, mais qui se trouvent plus ou moins obligés de s'engager dans le processus de la négociation collective.

L'existence de cette multitude d'associations a généré des conflits, conduit parfois à la coopération et entraîné des fusions. Ces luttes ont favorisé la syndicalisation du milieu, mais elles ont également coûté cher en temps, en énergie et en argent. L'auteur observe que la négociation collective est une menace pour les organisations professionnelles. Si elles la rejettent, elles courent le risque de perdre des membres qui passent aux syndicats conventionnels; pour l'accepter, il leur faut restructurer leurs organisations, augmenter les cotisations et affronter des conflits internes naissant de divergences de vue entre salariés, cadres et professionnels indépendants. Contrairement au secteur privé, la plupart des lois nouvelles étendent le droit de négociation à certaines catégories de cadres. Ceux-ci doivent cependant faire partie d'unités de négociation distinctes. Par ailleurs, en matière de sécurité syndicale, on recourt principalement à la formule de précompte syndical généralisé.

Un des problèmes majeurs, c'est évidemment celui de la grève. Même si elles sont généralement interdites, les grèves sont fréquentes et se produisent surtout au niveau des municipalités et des conseils scolaires. La plupart des syndicats ont abrogé les restrictions qu'ils s'étaient imposées en cette matière, ce qui en démontre le caractère de plus en plus militant et agressif. Du côté législatif, la tendance est de plus en plus à l'autorisation d'un droit limité de grève qui tient compte de la santé et de la sécurité de la population. L'arbitrage exécutoire des différends existe aussi.

L'action politique comme moyen de pression qui était courante avant la généralisation du droit de négociation est bien moins fréquente mais la politique reste

un facteur important. On ne se gêne pas pour faire usage de la négociation à double palier.

Enfin, la participation des groupes de couleur aux syndicats est considérable. Beaucoup de dirigeants syndicaux locaux appartiennent à des groupes sociaux minoritaires.

L'auteur conclut en soulignant que les choses changent vite et qu'il serait hasardeux de faire des prédictions mais il ne peut s'empêcher de noter que, les services publics grossissant sans cesse, le syndicalisme devrait conserver un bon bout de temps le vent dans les voiles. Le fait que certains États retardataires devront accorder le droit de négociation sous la force de l'opinion tend également au même effet. Il continuera aussi d'y avoir des conflits entre syndicats et organisations professionnelles, mais on mettra de plus en plus l'accent sur la négociation collective. À mesure que le syndicalisme progressera, il se peut aussi que l'on en arrive à des unités de négociation moins fragmentées et à des négociations au niveau des États plutôt que des collectivités locales. Les grèves se feront plus nombreuses. Toutefois, la négociation collective sera toujours différente dans le secteur public que dans le secteur privé. Par ailleurs, il faut considérer qu'elle reste le meilleur moyen de fixer les salaires et les conditions de travail parce que la nature du travail dans la société moderne, les besoins des employés et la distinction entre travailleurs et employeurs se ressemblent assez dans les deux secteurs pour justifier dans les services publics un régime de négociation fondé sur les mêmes principes que dans l'entreprise privée, même si certaines modalités doivent être différentes.

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